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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **PHYSICIAN ASSISTANT COMMITTEE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against,

14 **SERGEY NEMOLYAEV, P.A.**
1650 Lead Hill Blvd., #100
15 Roseville, CA 95661

16 Physician Assistant License No. PA 15360

17 Respondent

Case No. D1-2007-183581

18 **DEFAULT DECISION**
19 **AND ORDER**

[Gov. Code, §11520]

20 FINDINGS OF FACT

21 1. On or about October 6, 2010, Complainant Elberta Portman, in her official capacity
22 as the Executive Officer of the Physician Assistant Committee, Department of Consumer Affairs,
23 filed Accusation and Petition to Revoke Probation No. D1-2007-183581 against Sergey A.
24 Nemolyaev, P.A. (Respondent) before the Physician Assistant Committee.

25 2. On or about May 18, 2000, the Physician Assistant Committee (Committee) issued
26 Physician Assistant License No. PA 15360 to Respondent. At all times relevant to the charges
27 and allegations in the Accusation and Petition to Revoke Probation the license was valid. The
28 license is on probationary status. The license expired on April 30, 2010 has not been renewed.

1 3. In a disciplinary action entitled: "In the matter of the Accusation Against: SERGEY
2 NEMOLYAEV, P.A. Case No. 1E-2007-183581, the Physician Assistant Committee issued a
3 decision revoking respondent's license. The revocation was stayed and respondent was placed on
4 probation with terms and conditions.

5 4. On or about October 6, 2010, Kelly Montalbano, an employee of the Complainant
6 Agency, served by Certified and First Class Mail a copy of the Accusation and Petition to Revoke
7 Probation No. D1-2007-183581, Statement to Respondent, Notice of Defense, Request for
8 Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's
9 address of record with the Committee, which was and is 1650 Lead Hill Blvd., #100, Roseville,
10 California 95661 and to respondent at 6608 Central Park, Court Orangevale, California 95662.

11 On October 7, 2010, S. Nemolyaev signed the green receipt card acknowledging delivery
12 and receipt of the documents at 6608 Central Park Court Orangevale, California. At a date
13 unknown, Susan Lee signed the green receipt card acknowledging delivery at 1650 Lead Hill
14 Blvd., #100, Roseville, California. A copy of the Accusation and Petition to Revoke Probation,
15 the related documents, and Declaration of Service and the green receipt cards are attached as
16 Exhibit A, and are incorporated herein by reference.

17 4. Service of the Accusation and Petition to Revoke Probation was effective as a matter
18 of law under the provisions of Government Code section 11505, subdivision (c).

19 5. Government Code section 11506 states, in pertinent part:

20 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
21 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
22 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
23 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

24 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
25 Accusation and Petition to Revoke Probation, and therefore waived his right to a hearing on the
26 merits of Accusation and Petition to Revoke Probation No. D1-2007-183581.

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6. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

7. Pursuant to its authority under Government Code section 11520, the Committee finds Respondent is in default. The Committee will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A and B finds that the allegations in Accusation and Petition to Revoke Probation No. 1E-2010-207253 are true.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Sergey A. Nemolyaev, P.A. has subjected his Physician Assistant License No. PA 15360 to discipline.

2. A copy of the Accusation and Petition to Revoke Probation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Physician Assistant Committee is authorized to revoke Respondent's Physician Assistant License based upon the following violations alleged in the Accusation and Petition to Revoke Probation:

a. Business and Professions Code section 2239(a), use of controlled substances; Business and Professions Code section 2238 in conjunction with Health and Safety Code sections 11170 and 11172, violation of drug statutes by obtaining controlled substances for own use by fraud and deceit; 2234(e) dishonesty; violation of Condition 2 of the Disciplinary Order: failure to participate and successfully complete the Committee's Diversion Program; violation of Condition 8: obey all laws.

ORDER

IT IS SO ORDERED that Physician Assistant License No. PA 15360, heretofore issued to Respondent Sergey A. Nemolyaev, P.A., is revoked.

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1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
2 written motion requesting that the Decision be vacated and stating the grounds relied on within
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This Decision shall become effective at 5:00 p.m. on April 8, 2011.

6 It is so ORDERED March 9, 2011

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9 FOR THE PHYSICIAN ASSISTANT COMMITTEE
10 MEDICAL BOARD OF CALIFORNIA
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STEVEN KLOMPUS, CHAIR
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Attorneys for Complainant

BEFORE THE
PHYSICIAN ASSISTANT COMMITTEE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to Revoke
Probation Against:

SERGEY NEMOLYAEV, P.A.

1650 Lead Hill Blvd., #100
Roseville, CA 95661

Physician Assistant License No. PA15360

Respondent.

Case No. D1-2007-183581

**ACCUSATION AND PETITION
TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Elberta Portman (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Physician Assistant Committee, Department of Consumer Affairs.

2. On or about May 18, 2000, the Physician Assistant Committee issued Physician Assistant Number PA 15360 to Sergey A. Nemolyaev, P.A. (Respondent). At all times relevant to this proceeding the license was valid. The license is on probationary status. The license expired April 30, 2010, and is delinquent as of this date. On September 9, 2010, an Interim Suspension Order was issued pursuant to Government Code section 11529.

3. In a disciplinary action entitled: "In the Matter of the Accusation Against SERGEY NEMOLYAEV, P.A." Case No. 1E-2007-183581 the Physician Assistant Committee issued a decision revoking respondent's license. The revocation was stayed and respondent was placed on 3 years probation with terms and conditions. A true and correct copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Physician Assistant Committee (Committee) for the Medical Board of California, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

6. Section 3527 of the Code provides that the Committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician's assistant certificate for unprofessional conduct that includes, but is not limited to a violation of the Medical Practice Act and/or the regulations adopted by the Committee or the Medical Board of California ("Board").

7. Section 2234 of the Code provides in pertinent part that the Board shall take action against any licensee who is charged with unprofessional conduct.

8. Section 2234(e) of the Code provides that the commission of any act of dishonesty or corruption which is substantially related to the practice of a physician assistant constitutes unprofessional conduct.

9. Section 2238 of the Code states that a violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

10. Section 2239(a) of the Code provides in pertinent part that the use of or prescribing for or administering to himself of any controlled substance constitutes unprofessional conduct.

11. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance to himself.

12. Health and Safety Code section 11172 provides in part that no person shall obtain a controlled substance by (1) fraud, deceit, misrepresentation or subterfuge; or (2) the concealment of any material fact.

13. California Code of Regulations, Title 16, section 1399.521(a) provides that any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon is cause to discipline a physician assistant.

14. Section 3526 of the Code provides in part that a person who fails to renew his or her license or approval within five years after its expiration may not renew it, and it may not be reissued, reinstated, or restored thereafter.

15. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

DRUGS

16. Cocaine is a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(6), and a dangerous drug as defined in Code section 4022.

17. Methamphetamine is a Schedule II controlled substance as defined in Health and Safety Code section 11055(d)(2) and a dangerous drug as defined in Code section 4022.

18. Oxycontin is a Schedule II controlled substance as defined in Health and Safety Code section 11055(b)(1)(N) and a dangerous drug as defined in Code section 4022. Oxycontin is a brand name for Oxycodone HCl controlled release tablets.

19. Oxycodone hydrochloride with acetaminophen, also known as Percocet, is a Schedule II controlled substance as define in Health and Safety Code section 11055(b)(1)(N) and is defined as a dangerous drug in Code section 4022.

20. Hydrocodone bitartrate is generic for Vicodin, Lortab, and Norco is a Schedule III controlled substance as defined in Health and Safety Code section 11056(e)(4) and a dangerous drug as defined in Code section 4022.

21. Ambien is a Schedule IV Controlled Substance as defined in Health and Safety Code section 11057 and is a dangerous drug as defined in Code section 4022.

22. Marijuana is a Schedule I Controlled Substance as defined in Health and Safety Code section 11054(d)(13).

FIRST CAUSE FOR DISCIPLINE
(Unprofessional Conduct/Use of Controlled Substances)
[Bus. & Prof. Code section 2239(a)]

23. Respondent is subject to discipline under Code section 2239(a) in that he engaged in unprofessional conduct by repeatedly using and abusing controlled substances. Commencing at a date unknown in 2005 and continuing at least until August 25, 2010, respondent has been using and abusing controlled substances, namely Norco, Cocaine, Mehtamphetamine, Oxycontin, Oxycodone, and Marijuana. No lawful prescriptions were issued to respondent for these drugs. He took the pills from patients who had been prescribed these medications. He also bought drugs on the street. The circumstances are as follows:

A. In 2005 and 2006, while respondent was working as a physician assistant at Kaiser in Sacramento, he ordered the controlled substance Norco for himself and his family members without the approval of his supervising physician. When this was discovered, respondent denied self-use. He was terminated from Kaiser. An Accusation was filed and a Decision was issued placing him on 3 years probation for violating drug states.

B. On August 25, 2010, respondent was interviewed at his residence by Medical Board Investigator A.V. Respondent told her that he had lied to her during the original investigation. He told A.V. that while he was working at Kaiser, he had taken a lot of Norco for his own use, approximately 1,400 tablets. He stated that he obtained the Norco either by self-prescribing or it was written for him by others. He also wrote prescriptions in the name of his mother-in-law and took the pills himself. After he was fired, he stated that he bought up to 10 Norco at a time on the street. In January 2010, respondent stated that he

1 stopped using Norco and switched to Oxycontin. He would purchase the Oxycontin on the
2 street and would either smoke or snort it. Respondent declined to tell A.V. the names of the
3 people who sold him drugs

4 C. On or about January 2010, respondent was working as a physician assistant at
5 the pain management clinic of Jay Hendrickson, M.D. Respondent was terminated on April
6 23, 2010, after it was discovered that respondent asked patients to bring in their medications
7 Oxycontin and Norco tablets, and then took some of the tablets for his own use. Dr.
8 Hendrickson notified respondent's probation monitor. More than a dozen patients were
9 interviewed by a Board investigator. All of these patients reported that respondent asked
10 them to bring in their medications with them at their regularly scheduled appointments. All
11 patients reported having pills removed from the bottles. Sometimes respondent would
12 sometimes ask permission to take a pill or two and, telling the patient that he wanted to
13 check the manufacturer and compare generic versus name brand medications or that he
14 wanted to test the pills for quality. He would never return the medication claiming that the
15 medication was locked up or that the cleaning crew had taken it and now he needed some
16 more medication. During the appointment, he would leave the examination room with the
17 pill bottle or bottles. When he returned to the examination room pills would be missing.
18 All of the patients trusted respondent. Many of the patients did not realize that respondent
19 had taken their medication until later that day or later in the month when they ran short of
20 their medications.

21 (1) When Respondent asked patient C.F.W. to bring in her medications (Norco) on
22 her next visit, he told her that he was still learning the different companies that make
23 the drugs and that he was comparing brands.

24 (2) Respondent asked patient L.B. to bring in her pills (Oxycontin) in order to help
25 him with the learning process.

26 (3) Respondent asked patients P.S., B.B., and J.E. to bring in their pills (Oxycontin
27 and Norco) because he had a chemist friend who could test or analyze the pills to see
28

1 if they were any good. He told patient J.M. that his medication may have some
2 toxicity problems and that he would test the pills himself.

3 (4) Respondent told patients M.K., M.L., and A.B. that he was concerned that the
4 generic medications were not working as well as the name brands (Oxycontin and
5 Norco) and that he needed the medications because he was doing a study.

6 D. During the August 25, interview respondent confirmed that he did ask some
7 patients to bring in their medications, but he denied taking the medications and ingesting
8 them. He claimed that he had the patient's permission to take the pills. He stated the
9 medications were still at the office at his desk or they might have been thrown away.
10 Respondent intended to give some pills to "David", whose last name he could not recall
11 who worked in a chemistry lab at UC Davis. He had met "David" once through friends.

12 E. While on probation respondent was required enroll and participate in the
13 Committee's Diversion Program, which is MAXIMUS. Because he was in and out of
14 compliance with the program, he was asked to do a hair follicle test. There was difficulty
15 obtaining the sample since respondent shaved his body. The hair sample was collected on
16 August 13, 2010, and the results reported on August 18, 2010. The test was positive for
17 Cocaine, Oxycodone and metabolites of these drugs. During the interview with A.V.,
18 respondent was asked about the hair follicle test results. Respondent initially denied using
19 Cocaine. He later admitted to using Cocaine one time. He told A.V. that he had shaved his
20 body because he feared that the test would be positive and for a wrestling seminar.

21 F. During the August 25, interview respondent told A.V. that he purchased
22 synthetic urine over the Internet. He first ordered bags of synthetic urine in 2008. If he was
23 out of bags, he would ignore calls for drug testing. The synthetic urine came in a bag with
24 a hose and device on the hose to start and stop the flow. He also used his fingers to pinch
25 the tube. He stated that he would wear the bag under a belt around his waist.

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G. During the interview with A.V. on August 25, respondent stated that the last time he had used Oxycontin was 4 days ago. He was asked to provide a urine specimen which he did. The test results received on August 30, 2010, were positive for methamphetamine and marijuana. After receipt of these test results, A.V. contacted respondent by telephone to discuss the results. Respondent stated that he used methamphetamine once and denied marijuana use. Later in the conversation he stated that he smoked methamphetamine 5 times while on probation since February 2010. He stated that he last used methamphetamine and marijuana at a party over the weekend.

SECOND CAUSE FOR DISCIPLINE

(Violation of Drug Statutes)
[Bus. & Prof. Code section 2238]

24. Complainant incorporates paragraphs 23, A, B, C, D, E, F, and G as if set forth in full at this point.

25. Respondent is guilty of unprofessional conduct in violation of Code section 2238 in conjunction with Health and Safety Code sections 11170 and 11172, in that he obtained controlled substances, Norco, Oxycodone, Oxycontin, Methamphetamine, Cocaine, and Marijuana, for his own use by fraud and deceit when (1) he ordered controlled substances for himself and a family member without authorization by his supervising physician; (2) when he was working for Jay Hendrickson, M.D. and instructed patients to bring in their medications which he then took for his own use; and (3) when he purchased drugs on the street.

THIRD CAUSE FOR DISCIPLINE

(Dishonesty)
[Bus. & Prof. Code section 2234(e)]

26. Complainant incorporates paragraphs 23, A, B, C, D, E, F, and G as if set forth in full at this point.

27. Respondent is guilty of unprofessional conduct in violation of Code section 2234(e) in that he repeatedly lied and was dishonest about his drug as follows:

A. Respondent purchased and used synthetic urine to defeat random fluid testing commencing in 2008 and continuing until August 2010.

1 B. Respondent repeatedly lied about his own drug use and how he obtained drugs
2 when he was interviewed by A.V. on August 25 and 30, 2010. He repeatedly denied drug
3 use or minimized the use upon further questioning from A.V. He falsely denied taking
4 medication from patients for his own use. He repeatedly lied to patients in order to obtain
5 the medication from them. Respondent was dishonest when he refused to disclose how he
6 obtained drugs on the street. Respondent was dishonest when he told A.V. about the reason
7 that he shaved his body when requested to provide a hair follicle test.

8 **FIRST CAUSE FOR REVOCATION OF PROBATION**
9 (Diversion Program)

10 28. At all times after the effective date of respondent's probation, Condition 2 required
11 respondent to enroll in the Committee's Diversion Program. Respondent is required to participate
12 in the program and to "successfully complete the program".

13 29. Respondent's probation is subject to revocation because he failed to successfully
14 complete the program. The facts and circumstances regarding this violation are as follows: On or
15 about March 19, 2010 respondent enrolled in the Committee's Diversion Program, which is
16 MAXIMUS. On August 19, 2010, respondent was terminated from the program. Respondent
17 was deemed a public risk. (1) Commencing in April 2010 and continuing until August 2010
18 respondent repeatedly missed calls for random body fluid testing; (2) he failed to attend his
19 Clinical Assessment on April 19, 2010; (3) he failed to timely contact the Health Support Group
20 as directed; was a "no show" for his first Health Support Group; (4) On May 5, 2010 respondent
21 was sent a hair follicle collection kit. He failed to follow through and return the kit. He was
22 notified a second time and again failed to follow through; (5) When he reported to Springbrook/
23 Hazelden on May 3, 2010 to ascertain the level of care that he would require during enrollment in
24 the Diversion Program, he had shaved his hair so he could not complete follicle analysis.
25 Respondent also cut his nails to the quick so there was no way to for him to submit a nail sample.
26 (6) he failed to submit his 12-step attendance cards for the months of April, May and June (7) he
27 failed to submit his Monthly Self-Reports for April, May and June; and (8) he attempted to
28 subvert biological fluid testing by using synthetic urine.

SECOND CAUSE TO REVOKE PROBATION
(Obey All Laws)

30. At all times after the effective date of Respondent's probation, Condition 8 stated "Respondent shall obey all federal, state, and local laws, and all rules governing the practice of medicine as a physician assistant in California, and remain in full compliance with any court ordered criminal probation, payments, and other orders."

31. Respondent's probation is subject to revocation because he failed to comply with Condition 8, referenced above. The facts and circumstances are as follows:

A. Complainant incorporates paragraphs 23 A, B, C, D, E, F, and G as if set forth in full at this point.

B. Respondent failed to comply with this condition when he obtained controlled substances and dangerous drugs by fraud, deceit and misrepresentation. Respondent took drugs from patients for his own use. Respondent convinced patients to give him drugs by lying. Respondent bought drugs on the street. Respondent practiced as a physician assistant while he was using and abusing drugs.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Committee issue a decision:

1. Revoking the probation that was granted by the Physician Assistant Committee in Case No. 1E-2007-183581 imposing the disciplinary order that was stayed thereby revoking the Physician Assistant License No. PA 15360 issued to Sergey Nemolyaev, P.A;

2. Revoking or suspending Physician Assistant Number PA 15360, issued to Sergey. Nemolyaev, P.A.

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1 3 Ordering Sergey A. Nemolyaev, PA to pay the Physician Assistant Committee the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.
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7 DATED: October 6, 2010


ELBERTA PORTMAN
Executive Officer
Physician Assistant Committee
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A


Steven Klompus, P.A., Chair

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7 *Attorneys for Complainant*

8 **BEFORE THE**
PHYSICIAN ASSISTANT COMMITTEE
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **Sergey Nemolyaev, P.A.**

14 1650 Lead Hill Boulevard, #100
Roseville, CA 95661

15 Physician Assistant License No. PA 15360

16 Respondent.
17

Case No. 1E-2007-183581

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Elberta Portman (Complainant) is the Executive Officer of the Physician Assistant
23 Committee. She brought this action solely in her official capacity and is represented in this
24 matter by Edmund G. Brown Jr., Attorney General of the State of California, by Gail M. Heppell,
25 Supervising Deputy Attorney General.

26 2. Respondent Sergey Nemolyaev, P.A. (Respondent) is represented in this proceeding
27 by attorney Stephen M. Boreman, Law Offices of Slote & Links, 100 Pine Street, Suite 750, San
28 Francisco, CA 94111-5109.

3. On or about May 18, 2000, the Physician Assistant Committee issued Physician Assistant License No. PA 15360 to Sergey Nemolyaev, P.A. (Respondent). The license is in full force and effect and will expire on April 30, 2010, unless renewed.

JURISDICTION

4. Accusation No. 1E-2007-183581 was filed before the Physician Assistant Committee (Committee) for the Medical Board of California, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on October 8, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1E-2007-183581 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1E-2007-183581. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent understands and agrees that the charges and allegations in the First Cause
3 for Discipline in Accusation No. 1E-2007-183581, if proven at a hearing, constitute cause for
4 imposing discipline upon his Physician Assistant license.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
8 those charges.

9 10. Respondent agrees that his Physician Assistant's license is subject to discipline and
10 he agrees to be bound by the Committee's imposition of discipline as set forth in the Disciplinary
11 Order below.

12 **CONTINGENCY**

13 11. This stipulation shall be subject to approval by the Physician Assistant Committee.
14 Respondent understands and agrees that counsel for Complainant and the staff of the Physician
15 Assistant Committee may communicate directly with the Committee regarding this stipulation
16 and settlement, without notice to or participation by Respondent or his counsel. By signing the
17 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek
18 to rescind the stipulation prior to the time the Committee considers and acts upon it. If the
19 Committee fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and
20 Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible
21 in any legal action between the parties, and the Committee shall not be disqualified from further
22 action by having considered this matter.

23 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
24 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
25 effect as the originals.

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13. In consideration of the foregoing admissions and stipulations, the parties agree that the Committee may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician Assistant License Number PA 15360 issued to Respondent Sergey Nemolyaev, P.A. (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. CONTROLLED DRUGS - MAINTAIN RECORD Respondent shall maintain a record of all controlled substances administered, transmitted orally or in writing on a patient's record or handed to a patient by the respondent during probation showing all the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of controlled substances involved, 4) the indications and diagnosis for which the controlled substance was furnished, and 5) the name of the supervising physician prescriber.

Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Physician Assistant Committee or its designee, upon request and without charge.

2. DIVERSION PROGRAM Within 30 days of the effective date of this decision, Respondent shall enroll in the committee's Diversion Program for the purposes of evaluating respondent for substance abuse or drug dependency to determine whether he requires treatment and rehabilitation. If the Diversion Program determines that respondent is in need of treatment or rehabilitation for substance abuse or drug dependency, respondent shall participate in the program until the program determines that further treatment and rehabilitation is no longer necessary. Respondent shall successfully complete the program. The program determines whether or not respondent successfully completes the program. Respondent shall pay all costs of the program.

If the program determines that respondent is a danger to the public, upon notification from the program, respondent shall immediately cease practicing as a physician assistant until notified in writing by the committee or its designee that respondent may resume practice. The period of time that respondent is not practicing shall not be counted toward completion of the term of

1 probation.

2 3. ETHICS COURSE Within 60 days of the effective date of this decision, respondent
3 shall submit to the committee or its designee for its prior approval a course in ethics. The course
4 shall be limited to classroom, conference, or seminar settings. Respondent shall successfully
5 complete within the first year of probation. Respondent shall participate in an ethics course at his
6 own expense.

7 Respondent shall submit a certification of successful completion to the committee or its
8 designee
9 within 15 days after completing the course.

10 4. PRESCRIBING PRACTICES COURSE Within 60 days of the effective date of this
11 decision, respondent shall enroll in a course in prescribing practices course equivalent to the
12 Prescribing Practices Course, Physician Assessment and Clinical Education Program at the
13 University of California, San Diego School of Medicine ("PACE"). Respondent shall pay for the
14 cost of the course. Respondent shall submit a certification of successful completion to the
15 Committee or its Designee no later than 15 calendar days after successfully completing the
16 course.

17 5. ON-SITE SUPERVISION The supervising physician shall be on site at least 50%
18 of the time respondent is practicing.

19 6. APPROVAL OF SUPERVISING PHYSICIAN Within 30 days of the effective date
20 of this decision, respondent shall submit to the committee or its designee for its prior approval the
21 name and license number of the supervising physician and a practice plan detailing the nature and
22 frequency of supervision to be provided. Respondent shall not practice until the supervising
23 physician and practice plan are approved by the committee or its designee. Respondent shall
24 have the supervising physician submit quarterly reports to the committee or its designee.

25 If the supervising physician resigns or is no longer available, respondent shall, within 15
26 days, submit the name and license number of a new supervising physician for approval.

27 7. NOTIFICATION OF EMPLOYER AND SUPERVISING PHYSICIAN
28 Respondent shall notify his current and any subsequent employer and supervising physician(s) of

1 his discipline and provide a copy of the Accusation, Decision, and Order to each such employer
2 and supervising physician(s) during his period of probation, at the onset of that employment.
3 Respondent shall ensure that each employer informs the committee, or its designee in writing
4 within thirty (30) days, verifying that the employer and supervising physician(s) have received a
5 copy of the Accusation, Decision, and Order.

6 8. OBEY ALL LAWS Respondent shall obey all federal, state, and local laws, and all
7 rules governing the practice of medicine as a physician assistant in California, and remain in full
8 compliance with any court ordered criminal probation, payments, and other orders.

9 9. QUARTERLY REPORTS Respondent shall submit quarterly declarations under
10 penalty of perjury on forms provided by the committee or its designee, stating whether there has
11 been compliance with all the conditions of probation.

12 10. OTHER PROBATION REQUIRMENTS Respondent shall comply with the
13 committee's probation unit. Respondent shall, at all times, keep the committee and probation unit
14 informed of respondent's business and residence addresses. Changes of such addresses shall be
15 immediately communicated in writing to the committee and probation unit. Under no
16 circumstances shall a post office box serve as an address of record, except as allowed by
17 California Code of Regulations 1399.523.

18 Respondent shall appear in person for an initial probation interview with the committee or
19 its designee within 90 days of the decision. Respondent shall attend the initial interview at a time
20 and place determined by the committee or its designee. Respondent shall, at all times, maintain a
21 current and renewed physician assistant license. Respondent shall also immediately inform the
22 probation unit, in writing, of any travel to any areas outside the jurisdiction of California which
23 lasts, or is contemplated to last, more than thirty (30) days.

24 11. INTERVIEW WITH MEDICAL CONSULTANT Respondent shall appear in
25 person for interviews with the committee's medical or expert physician assistant consultant upon
26 request at various intervals and with reasonable notice.

27 12. TOLLING FOR OUT-OF -STATE PRACTICE OR RESIDENCE The period of
28 probation shall not run during the time respondent is residing or practicing outside the jurisdiction

1 of California. If, during probation, respondent moves out of the jurisdiction of California to
2 reside or practice elsewhere, including federal facilities, respondent is required to immediately
3 notify the committee in writing of the date of departure and the date of return, if any.

4 Respondent's license shall be automatically canceled if respondent's period of temporary
5 or permanent residence or practice outside of California totals two years. Respondent's license
6 shall not be canceled as long as respondent is residing and practicing as a physician assistant in
7 another state of the United States and is on active probation with the physician assistant licensing
8 authority of that state, in which case the two year period shall begin on the date probation is
9 completed or terminated in that state.

10 13. FAILURE TO PRACTICE AS A PHYSICIAN ASSISTANT – CALIFORNIA

11 RESIDENT In the event respondent resides in California and for any reason respondent stops
12 practicing as a physician assistant in California, respondent shall notify the committee or its
13 designee in writing within 30 calendar days prior to the dates of non-practice and return to
14 practice. Any period of non-practice within California, as defined in this condition, will not apply
15 to the reduction of probationary terms and does not relieve respondent of the responsibility to
16 comply with the terms and conditions of probation. Non-practice is defined as any period of time
17 exceeding 30 calendar days in which respondent is not practicing as a physician assistant. All
18 time spent in a clinical training program that has been approved by the committee or its designee,
19 shall be considered time spent in the practice of medicine. For the purposes of this condition,
20 non-practice due to a committee ordered suspension or in compliance with any other condition of
21 probation, shall not be considered a period of non-practice. Respondent's license shall be
22 automatically canceled if, for a total of two years, respondent resides in California and fails to
23 practice as a physician assistant.

24 14. UNANNOUNCED CLINICAL SITE VISIT The committee or its designee may
25 make unannounced clinical site visits at any time to ensure that respondent is complying with all
26 terms and conditions of probation.

27 15. CONDITION FULFILLMENT A course, evaluation, or treatment completed after
28 the acts that gave rise to the charges in the Accusation but prior to the effective date of the

1 decision may, in the sole discretion of the committee or its designee, be accepted towards
2 fulfillment of the condition.

3 //

4 16. COMPLETION OF PROBATION Respondent shall comply with all financial
5 obligations (e.g. cost recovery, probation costs) no later than 60 calendar days prior to the
6 completion of probation. Upon successful completion of probation, respondent's license will be
7 fully restored.

8 17. VIOLATION OF PROBATION If respondent violates probation in any respect, the
9 committee, after giving respondent notice and the opportunity to be heard, may revoke probation
10 and carry out the disciplinary order that was stayed. If an accusation or petition to revoke
11 probation is filed against respondent during probation, the committee shall have continuing
12 jurisdiction until the matter is final, and the period of probation shall be extended until the matter
13 is final.

14 18. COST RECOVERY Respondent is hereby ordered to reimburse the Physician
15 Assistant Committee the amount of \$1,700 within 90 days from the effective date of this decision
16 for its investigative and prosecution costs. Failure to reimburse the committee's costs for its
17 investigation and prosecution shall constitute a violation of the probation order, unless the
18 committee agrees in writing to payment by an installment plan because of financial hardship. The
19 filing of bankruptcy by the respondent shall not relieve the respondent of his responsibility to
20 reimburse the committee for its costs.

21 19. PROBATION MONITORING COSTS Respondent shall pay the costs associated
22 Probation monitoring each and every year of probation, as designated by the committee, which
23 may be adjusted on an annual basis. The costs shall be made payable to the Physician Assistant
24 Committee and delivered to the committee no later than January 31 of each calendar year.

25 20. VOLUNTARY LICENSE SURRENDER Following the effective date of this
26 probation, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable
27 to satisfy the terms and conditions of probation, respondent may voluntarily tender his license to
28 the committee. The committee reserves the right to evaluate the respondent's request and to

1 exercise its discretion whether to grant the request, or to take any other action deemed appropriate
2 and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent
3 shall within 15 days deliver respondent's wallet and wall certificate to the committee or its
4 designee and shall no longer practice as a physician assistant. Respondent will no longer be
5 subject to the terms and conditions of probation and the surrender of respondent's license shall be
6 deemed disciplinary action. If respondent re-applies for a physician assistant license, the
7 application shall be treated as a petition for reinstatement of a revoked license.

8 ACCEPTANCE


9 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
10 discussed it with my attorney, Stephen Boreman. I understand the stipulation and the effect it
11 will have on my Physician Assistant License. I enter into this Stipulated Settlement and
12 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
13 Decision and Order of the Physician Assistant Committee, Medical Board of California.

14
15 DATED: 10-29-09


16 SERGEY NEMOLYAEV, P.A.
Respondent

17 I concur with this stipulated settlement.

18
19 DATED: 10/29/09


20 Stephen Boreman
Adam & Slote
21 Attorney for Respondent

22
23 //

24 //

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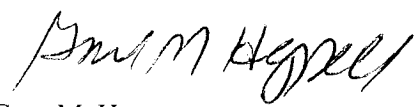
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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Physician Assistant Committee, Medical Board of California of the Department of Consumer Affairs.

Dated: 11/30/19

Respectfully Submitted,
EDMUND G. BROWN JR.
Attorney General of California
GAIL M. HEPPELL
Supervising Deputy Attorney General



GAIL M. HEPPELL
Supervising Deputy Attorney General

Attorneys for Complainant

SA2008101177
Stipulation.rtf

Exhibit A

Accusation No. 1E-2007-183581

1 EDMUND G. BROWN JR., Attorney General
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7 Attorneys for Complainant

8 **BEFORE THE**
9 **PHYSICIAN ASSISTANT COMMITTEE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 1E 2007 183581

14 SERGEY NEMOLYAEV, P.A.
1650 Lead Hill Boulevard, #100
15 Roseville, CA 95661

A C C U S A T I O N

16 Physician Assistant License No. PA 15360

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Elberta Portman (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Physician Assistant Committee, Department of
22 Consumer Affairs.

23 2. On or about May 18, 2000, the Physician Assistant Committee
24 (Committee) issued Physician Assistant License Number PA 15360 to Sergey Nemolyaev, P.A.
25 (Respondent). The license was in full force and effect at all times relevant to the charges brought
26 herein and will expire on April 30, 2010, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Committee for the Medical Board of
California, Department of Consumer Affairs, under the authority of the following laws. All
section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3527 of the Code provides that the committee may order the denial
2 of an application for, or the issuance subject to terms and conditions of, or the suspension or
3 revocation of, or the imposition of probationary conditions upon a physician's assistant certificate
4 for unprofessional conduct, that includes, but is not limited to, a violation of the Medical Practice
5 Act and/or the regulations adopted by the Committee or the Board.

6 5. Section 125.3 of the Code states, in pertinent part, that the Board may
7 request the administrative law judge to direct a licentiate found to have committed a violation or
8 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
9 and enforcement of the case.

10 6. Section 3502.1 of the Code states:

11 (a) In addition to the services authorized in the regulations adopted by the board,
12 and except as prohibited by Section 3502, while under the supervision of a licensed
13 physician and surgeon or physicians and surgeons authorized by law to supervise a
14 physician assistant, a physician assistant may administer or provide medication to a
15 patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to
16 a person who may lawfully furnish the medication or medical device pursuant to
17 subdivisions (c) and (d).

18 (1) A supervising physician and surgeon who delegates authority to issue a drug
19 order to a physician assistant may limit this authority by specifying the manner in which
20 the physician assistant may issue delegated prescriptions.

21 (2) Each supervising physician and surgeon who delegates the authority to issue a
22 drug order to a physician assistant shall first prepare or adopt a written, practice specific,
23 formulary and protocols that specify all criteria for the use of a particular drug or device,
24 and any contraindications for the selection. The drugs listed shall constitute the
25 formulary and shall include only drugs that are appropriate for use in the type of practice
26 engaged in by the supervising physician and surgeon. When issuing a drug order, the
27 physician assistant is acting on behalf of and as an agent for a supervising physician and
28 surgeon.

1 (b) "Drug order" for purposes of this section means an order for medication which
2 is dispensed to or for a patient, issued and signed by a physician assistant acting as an
3 individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of
4 Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued
5 pursuant to this section shall be treated in the same manner as a prescription or order of
6 the supervising physician, (2) all references to "prescription" in this code and the Health
7 and Safety Code shall include drug orders issued by physician assistants pursuant to
8 authority granted by their supervising physicians, and (3) the signature of a physician
9 assistant on a drug order shall be deemed to be the signature of a prescriber for purposes
10 of this code and the Health and Safety Code.

11 (c) A drug order for any patient cared for by the physician assistant that is issued
12 by the physician assistant shall either be based on the protocols described in subdivision
13 (a) or shall be approved by the supervising physician before it is filled or carried out.

14 (1) A physician assistant shall not administer or provide a drug or issue a drug
15 order for a drug other than for a drug listed in the formulary without advance approval
16 from a supervising physician and surgeon for the particular patient. At the direction and
17 under the supervision of a physician and surgeon, a physician assistant may hand to a
18 patient of the supervising physician and surgeon a properly labeled prescription drug
19 prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law,
20 or a pharmacist.

21 (2) A physician assistant may not administer, provide or issue a drug order for
22 Schedule II through Schedule V controlled substances without advance approval by a
23 supervising physician and surgeon for the particular patient.

24 (3) Any drug order issued by a physician assistant shall be subject to a reasonable
25 quantitative limitation consistent with customary medical practice in the supervising
26 physician and surgeon's practice.

27 ///

28 ///

1 (d) A written drug order issued pursuant to subdivision (a), except a written drug
2 order in a patient's medical record in a health facility or medical practice, shall contain the
3 printed name, address, and phone number of the supervising physician and surgeon, the
4 printed or stamped name and license number of the physician assistant, and the signature
5 of the physician assistant. Further, a written drug order for a controlled substance, except
6 a written drug order in a patient's medical record in a health facility or a medical practice,
7 shall include the federal controlled substances registration number of the physician
8 assistant. The requirements of this subdivision may be met through stamping or
9 otherwise imprinting on the supervising physician and surgeon's prescription blank to
10 show the name, license number, and if applicable, the federal controlled substances
11 number of the physician assistant, and shall be signed by the physician assistant. When
12 using a drug order, the physician assistant is acting on behalf of and as the agent of a
13 supervising physician and surgeon.

14 (e) The medical record of any patient cared for by a physician assistant for whom
15 the supervising physician and surgeon's drug order has been issued or carried out shall be
16 reviewed and countersigned and dated by a supervising physician and surgeon within
17 seven days.

18 (f) All physician assistants who are authorized by their supervising physicians to
19 issue drug orders for controlled substances shall register with the United States Drug
20 Enforcement Administration (DEA).

21 7. Section 2238 of the Code states that a violation of any federal statute or
22 federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or
23 controlled substances constitutes unprofessional conduct.

24 8. Section 2239, subdivision (a) of the Code states in pertinent part:

25 "(a) The use or prescribing for or administering to himself . . . , of any controlled
26 substance; or the use of any of the dangerous drugs specified in Section 4022, . . . , to the
27 extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other
28 person or to the public, or to the extent that such use impairs the ability of the licensee to

1 practice medicine safely or more than one misdemeanor or any felony involving the use,
2 consumption, or self-administration of any of the substances referred to in this section, or
3 any combination thereof, constitutes unprofessional conduct. . . ."

4 9. Health and Safety Code section 11170 provides that no person shall
5 prescribe, administer, or furnish a controlled substance for himself.

6 10. California Code of Regulations, title 16, section 1399.521, subdivision (a)
7 states in pertinent part as follows:

8 "In addition to the grounds set forth in section 3527, subd. (a), of the code
9 the committee may deny, issue subject to terms and conditions, suspend, revoke or
10 place on probation a physician assistant for the following causes:

11 "(a) Any violation of the State Medical Practice Act which would
12 constitute unprofessional conduct for a physician and surgeon."

13 **FIRST CAUSE FOR DISCIPLINE**
14 **(Unauthorized Drug Orders)**
[Bus. & Prof. Code, § 3502.1]

15 11. Respondent is subject to disciplinary action under section 3502.1 in that he
16 issued drug orders for Schedule II and III controlled substances without advance approval by his
17 supervising physician and surgeon. The circumstances are as follows:

18 12. From 2000 through 2006, Respondent worked as a physician assistant for
19 Kaiser. He worked in the Orthopedics Department at the Morse Avenue location.

20 13. Janika Ertl, M.D. was Respondent's supervising physician between June
21 2005 and October 2006. During this time, Respondent issued the following drug orders for
22 himself, family members, and family members of colleagues without Dr. Ertl's advance
23 approval:

Date	Patient	Drug Order	Schedule
06-19-06	C.J.	Norco, 200 tablets	III
10-06-06	C.J.	Norco, 200 tablets	III
06-07-05	Respondent	Norco, 100 tablets	III
09-12-05	Respondent	Norco, 100 tablets	III

1	10-12-05	Respondent	Norco, 100 tablets	III
2	10-21-05	Respondent	Norco, 30 tablets	III
3	11-14-05	Respondent	Norco, 50 tablets	III
4	08-10-06	J.E.	Norco, 200 tablets	III
5	09-22-05	I.S.	Norco, 100	III
6	11-21-05	I.S.	Norco, 100	III
7	12-30-05	I.S.	Norco, 100	III
8	05-03-06	I.S.	Norco, 100	III
9	09-28-06	I.S.	Norco, 300 tablets	III
10	09-28-06	I.S.	Norco, 150 tablets	III
11	02-28-06	K.J.	Adderall, 200 tablets	II
12	09-13-06	G.S.	Norco, 100 tablets	III
13	10-19-06	G.S.	Norco, 100 tablets	III

14. Respondent's conduct as set forth in paragraphs 9 and 10 above constitutes unprofessional conduct within the meaning of section 3502.1.

SECOND CAUSE FOR DISCIPLINE
(Violation of State Drug Statutes and Regulations)
[Bus. & Prof. Code, §§ 3527, subd. (a), 2238; Cal. Code Regs, tit. 16, § 1399.521, subd. (a); Health and Safety Code, § 11170]

15. Respondent is subject to disciplinary action under sections 3527, subdivision (a), 2238, California Code of Regulations, title 16, section 1399.521, subdivision (a), and Health and Safety Code section 11170 in that he prescribed a controlled substance for himself. The circumstances are as follows:

16. Complainant realleges paragraphs 9 and 10 above, as if fully set forth at this point.

17. Respondent's conduct as set forth in paragraphs 9 and 10 above constitutes unprofessional conduct within the meaning of sections 3527, subdivision (a), 2238, California Code of Regulations, title 16, section 1399.531, subdivision (a), and Health and Safety Code section 11170.

THIRD CAUSE FOR DISCIPLINE
(Self-Prescribing Controlled Substances)
[Bus. & Prof. Code, § 2239, subd. (a)]

18. Respondent is subject to disciplinary action under section 2239, subdivision (a) in that he prescribed a controlled substance for himself. The circumstances are as follows:

19. Complainant realleges paragraphs 10 and 11 above, as if fully set forth at this point.

20. Respondent's conduct as set forth in paragraphs 9 and 10 above constitutes unprofessional conduct within the meaning of section 2239, subdivision (a).

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physician Assistant Committee issue a decision:

1. Revoking or suspending Physician Assistant License Number PA 15360, issued to Sergey Nemolyaev, P.A.;

2. Ordering Sergey Nemolyaev, P.A. to pay the Physician Assistant Committee the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: October 8, 2008



ELBERTA PORTMAN
Executive Officer
Physician Assistant Committee
Department of Consumer Affairs
State of California
Complainant